

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,832

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her request for coverage of an air conditioner under the Emergency Fuel Assistance program. The issue is whether the petitioner presented an emergency need under the program.

FINDINGS OF FACT

1. In mid-July of 1995, the petitioner, who is a sixty-five-year-old woman who lives on Social Security and SSI benefits of \$537.41 per month, heard on the television that Congress would appropriate some emergency funds to welfare agencies to distribute to persons who needed to have air conditioners for health reasons due to the unusually hot summer.
2. Sometime between July 18 and July 20, 1995, the petitioner called the District Office of the Department of Social Welfare to ask if she could apply for the program but was told that no one was aware of any such program and that there was no current program which would pay for an air conditioner.
3. The petitioner, who suffers from angina and hypertension, decided that she was in need of the air-conditioner immediately and could not wait another day to get relief. She was suffering intense chest pain and had been advised by her physician to get an air conditioning unit. After she talked to personnel at DSW, she called community action and a private church organization but could not get any help. She turned to her daughter who lives in a town on the other side of Vermont and asked for help. Her daughter came over to her home with a friend who had a Sears credit card. Her friend took her to Sears and bought her an air conditioner for \$259.99, which she paid for with the credit card. The unit was installed on July 20, 1995.
4. The petitioner has no formal agreement with her daughter's friend to repay her for the purchase of the air-conditioner. She was told by the woman to repay it when she could. The daughter's friend was very concerned about her health and has no plans to take back the air-conditioner if she does not receive

payment soon. The petitioner has paid \$20 thus far on the unit. The petitioner is on a tight budget and must eat special foods. She has little money with which to repay the friend and worries she may never be able to do so. She is scrimping on food to pay the friend back for the unit.

5. On July 21, 1995, the White House issued a press release stating that \$100 million in funds was being released that day in emergency home energy assistance funds due to the recent "extremely hot weather." \$246,000 was allocated to Vermont through the Department of Health and Human Services which directed that the funds could be used to purchase fans or air conditioners and to pay cooling bills as needed to get through the heat emergency. An HHS directive stated that funds were to go to households with the lowest income and the highest cooling costs and required specific outreach to the elderly and disabled.

6. The testimony indicates that the emergency fuel allocation was a surprise to Vermont officials who learned about it only after the President's directive was issued on July 21, 1995. Shortly thereafter, a determination was made to spend 5% of the funds, or about \$12,000 on fans or air conditioners for medically needy households. On August 3, 1995, the following criteria for air conditioning assistance was issued by Veda Lyon, the fuel program chief and distributed to DSW District Directors:

1. Extreme medical need, with life threatening health condition verified by a physician.
2. A prescription for an air conditioner would be required.
3. EF guidelines would be used for additional eligibility determination (does the client have potential to purchase this via a loan, home equity, etc.).
4. Approval by the District Director or her/his designee.

We should emphasize that these are extremely medically needy individuals and that very few households will be able to be assisted under this component. This is NOT an entitlement program.

6. On August 1, 1995, the petitioner called DSW again to ask that her air-conditioning unit be paid for through the emergency LIHEAP money. She spoke at length to the District Director who wrote her a letter the same day saying that he did not think she would meet the criteria because he had to look at her ability to purchase the unit on her own. Because she had been able to have a friend buy her the unit and it was already in place, he did not think she would be eligible although he enclosed an application and advised her to return it if she wished.

7. On August 2, 1995, the petitioner mailed a formal application asking for \$280 (a figure which presumably included interest) to repay her friend for the purchase of the air-conditioner. She stated that she felt her situation was an emergency because her health dictated purchase of the unit and because repayment of the loan would require her to take amounts normally set aside for purchase of her food. With her application, she provided a statement from her physician indicating that she needed an air conditioner for her medical condition.

8. On August 4, 1995, the petitioner was denied assistance because she did not show an emergency need. The Department agrees that the petitioner is low income, has no personal assets, and had a medical need with a life threatening condition which was verified by a physician and for which an air conditioner was prescribed. The finding of lack of an emergency was based on the fact that the petitioner had

already been able to provide this unit for herself through reliance upon a loan from a friend which she was not formally obligated to repay.

9. The petitioner requested and received a Director's hearing which affirmed the denial. The Operation's Chief reviewed the Director's decision and reaffirmed it. The petitioner appealed contending that she should get the money to repay her friend because she showed the medical need, because she has a very low income and because repayment would be a hardship for her.

ORDER

The decision of the Department is affirmed.

REASONS

The Department has no formally adopted regulations to administer the funds from this emergency program because they required immediate disbursement. However, the criteria adopted by the program with regard to "additional eligibility determination" make reference to the criteria set forth in the extant emergency assistance program for heating fuel which provides, in pertinent part, as follows:

Eligibility

It is not the intent of these regulations to define a program of entitlement; i.e., a household whose income and resources are within the specified limits and who has a fuel need does not become entitled to a grant, and indeed may be denied. It is the intent of this regulation to provide a framework within which department staff, based on their judgment, may grant assistance to households who face a heating crisis.

In making this judgment staff will consider the individual situation; income, resources, prior applications, and what led to the crisis. Staff will also consider what potential income and resources are available and the extent to which the household can commit all or a portion of such potential toward meeting or partially meeting their current heating need crisis. This potential shall include all members of the household and not simply those bearing direct responsibility for the purchase of fuel.

Within this framework, staff will determine eligibility on the basis of conserving program funds and utilizing client resources to the maximum extent reasonably possible. Staff will make every effort to assist those who are denied eligibility to find alternative solutions to their problem.

W.A.M. 2951

The above regulation gives the office staff, in this case the District Director, considerable discretion in determining whether scarce emergency funds will be disbursed in any situation. The sole issue for determination here is whether the District Office Director abused his discretion in determining that the petitioner was not eligible for payment for an air-conditioning unit under the emergency cooling program. It must be concluded based on all the facts that the petitioner has not shown that the exercise of discretion in this case was unreasonable.

The Director concluded at the time of application that the petitioner had an operating air-conditioner and was not in any immediate physical danger from the weather conditions. In addition, there is nothing in

the facts from which it could be accurately concluded that the petitioner was or is in any danger of either losing her air-conditioner or being without adequate food if she did not or does not get an emergency grant. Given this situation it cannot be found that the Director was in error when he determined that no crisis existed which would justify the expenditure of very scarce, one-time funds.

If the emergency program had existed on July 18, 1995, when the petitioner first asked for assistance, she very well may have been found eligible. However, her situation had changed by the time the program came into actual existence on July 21, 1995. The fact that she may have been eligible earlier that month or that others with her income and resources may have been eligible at the time of program start-up does not enhance her eligibility at the moment at issue. A crisis is a situation which must be evaluated with regard to the facts as they exist on the day when assistance is requested. The evidence shows that the Director had ample evidence to indicate that no medical crisis existed on August 2, 1995, when the petitioner applied for assistance. His reasonable decision must be upheld. 3 V.S.A. 3091(d), Fair Hearing Rule 17.

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